

TOPICS, GOALS, & SUGGESTIONS FOR 2013 RULE MAKING

Submitted by the Cultural Resources Interest Group Representatives

December 10, 2012

Legislative mandated components for rulemaking in 2013 (provided by Ecology):

By December 31, 2013, the department of ecology shall:

- (i) Update, but not decrease, the thresholds for all other project actions not specified in subsection (2) of this section [i.e. Phase 1 rulemaking in 2012];
- (ii) Propose methods for integrating the state environmental policy act process with provisions of the growth management act, chapter 36.70A RCW, including consideration of ways to revise WAC 197-11-210 through 197-11-232 to further the goals of RCW 43.21C.240; and
- (iii) Create categorical exemptions for minor code amendments for which review under chapter 43.21C RCW would not be required because they do not lessen environmental protection.

Topics (from above):

- 1) Impact of increased thresholds and categorical exemptions – increased number of projects that will *not* be reviewed for impacts to cultural resources; SEPA exemptions based on size are not appropriate in terms of cultural resources...locational information is more appropriate
- 2) GMA/SMA integration – cultural resource planning is currently optional under GMA and SMA

Topics (from 2012 carryover, including schedule from Facilitator on 11.13.12):

- 1) Notification (including tribes, advocacy groups, and the public) – SEPA is often the only notification these parties receive; should be given for all projects involving ground disturbance *and/or* buildings 45 years and older *or* eligible for/listed in historic register(s) and surveys
- 2) Environmental Checklist – improvements to Item 13; SEPA Officials should have a process for assessing applicants' answers
- 3) Exceptions to exemptions – cultural resources may represent such an exception

Goals:

- 1) NO NET LOSS of cultural resource protections (e.g. notification, pre-project review)
- 2) Heightened recognition of cultural resource issues at the State and local level
- 3) Better understanding at the State and local level of the increased availability of relevant information (e.g. DAHP's online WISAARD database) local governments should apply during planning and development activities, including the SEPA process
- 4) Pre-project review of impacts – represents an *essential proactive opportunity* to ensure that the State and its citizens fulfill their responsibility to "preserve important historic, cultural, and natural aspects of our national heritage" (RCW 43.21C.020)

Suggestions:

- 1) Projects should only be SEPA-exempt according to the following "findings":

Exempt for archaeology if *any*:

- 1) Prior negative survey on file.
- 2) No ground disturbance proposed.
- 3) Project in 100% culturally-sterile fill.

Exempt for built environment if *both*:

- 1) Less than 45 years old; *and*
- 2) Not eligible for or listed in any historic register or historic survey.

Exempt for archaeology *and* built environment if:

- 1) Cultural resource management plan is incorporated into Comp Plan, *or*
- 1) Local ordinance or development regulations address pre-project review and standard inadvertent discovery language (SIDL), *and*
- 2) Data-sharing agreement is in place.

For *all* projects, exempt or not:

Include SIDL on all related permits (compliance with RCW 27.53, 27.44)

- 2) Require jurisdictions wishing to adopt higher thresholds or qualify for exemptions to include appropriate cultural resource protection language in their comprehensive plans and/or development regulations. Encourage them to work with DAHP on model language.
- 3) Revise the Checklist to require applicants to complete Question #13 by using available data (e.g. DAHP's online WISAARD database) or by seeking assistance from a third party, such as DAHP, tribes, and/or CRM professionals
- 4) Require SEPA Officials to review answers to Checklist Question #13 by using available data (e.g. DAHP's online WISAARD database) or by seeking assistance from a third party, such as DAHP, tribes, and/or CRM professionals
- 5) Train SEPA Officials to require any necessary cultural resource protections (e.g. on-the-ground survey, archaeological monitoring) via permit conditions as third party reviewers can only recommend such measures
- 6) Inform applicants and SEPA Officials of the following:
Washington State law (RCW 27.53 and 27.44) protects archaeological resources (RCW 27.53) and Indian burial grounds and historic graves (RCW 27.44) located on both the public and private lands of the State.
An archaeological excavation permit issued by DAHP is required in order to disturb an archaeological site.
Knowing disturbance of burials/graves and failure to report the location of human remains are prohibited at all times.